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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

6

Application Number

10/723,172

Filing Date

November 26, 2003

First Named Inventor

James A. McEwan

Art Unit

3748

Examiner Name

Thai Ba Trieu

Attorney Docket Number

HOET-16

ENCLOSURES (Check all that apply)☐

Fee Transmittal Form

☐

Fee Attached

☐

Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

☐

Extension of Time Request

☐

Express Abandonment Request

☐

Information Disclosure Statement

☐

Certified Copy of Priority Document(s)

☐Reply to Missing Parts/
Incomplete Application☐Reply to Missing Parts
under 37 CFR 1.52 or 1.53☐

Drawing(s)

☐

Licensing-related Papers

☐

Petition

☐Petition to Convert to a
Provisional Application☐

Power of Attorney, Revocation

☐

Change of Correspondence Address

☐

Terminal Disclaimer

☐

Request for Refund

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CD, Number of CD(s) _____

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Remarks

☐

After Allowance Communication to TC

☐Appeal Communication to Board
of Appeals and Interferences☒Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)☐

Proprietary Information

☐

Status Letter

☐Other Enclosure(s) (please identify
below):

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Krieg DeVault LLP

Signature

Printed name

Jason A. Houdek

Date

January 25, 2007

Reg. No.

54,620

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January 25, 2007

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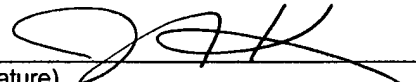
Art Unit: 3748
Confirmation
No.: 5747
Application
No.: 10/723,172
Title: TURBOCHARGER WITH
WASTEGATE

Inventor: James A. McEwan
Filing Date: November 26, 2003
Attorney
Docket No: HOET-16
Examiner: Thai Ba Trieu

Certificate Under 37 CFR 1.8(a)

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on January 25, 2007


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Jason A. Houdek
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REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is respectfully submitted in accordance with 37 CFR § 41.41.

I. STATUS OF CLAIMS

In view of the Examiner's Answer, the status of the claims is as follows. Claims 1-8 and 10-20 are pending. Claims 14-20 are allowed. Claims 2-4 and 11-13 are objected to as depending from a rejected base claim, but would be allowed if rewritten in independent form to include the limitations of the base claim and any intervening claims. Claims 1, 5-8, and 10 remain rejected. The obviousness-type double patenting rejection remains, but can be overcome by the filing of a terminal disclaimer.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

In view of the Examiner's Answer, the issues in this appeal have been narrowed. The issue now remaining in this appeal is the rejection of claims 1, 5-8, and 10 under 35 U.S.C. § 103(a) based upon U.S. Patent No. 5,159,815 to Schlamadinger in view of U.S. Patent No. 4,549,470 to Yogo.

III. ARGUMENTS

Applicant submits this Reply Brief to request formal clarification of the Examiner's Answer. As set forth above, Applicant's understanding of the Examiner's Answer is that claims 14-20 are allowed, claims 2-4 and 11-13 are objected to as depending from a rejected base claim, but would be allowed if rewritten in independent form to include the limitations of the base claim and any intervening claims, and that claims 1, 5-8, and 10 remain rejected under 35 U.S.C. § 103(a) based upon U.S. Patent No. 5,159,815 to Schlamadinger in view of U.S. Patent No. 4,549,470 to Yogo.

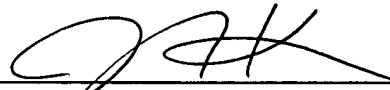
If Applicant's understanding is correct, Applicant would be agreeable to withdraw of the present appeal and reopening of prosecution to allow amendments and a terminal disclaimer which would allow the present application to issue.

Applicant wishes to clarify its understanding is view of some minor informalities in the Examiner's Answer, namely paragraph 3 indicates claims 14-20 are allowed, while paragraph 6 indicates claims 15-16 remain rejected, and paragraph 6 indicates claims 11-13 to be allowable while paragraph 2 indicates only claims 11-12 to be allowable. Applicant respectfully requests a response to this Reply Brief confirming that Applicant's understanding of the status of this appeal as set forth above is correct.

In the event that Applicant's understanding is correct, Applicants agree to withdraw this appeal and reopen prosecution to allow amendments and a terminal disclaimer which would allow the present application to issue. In the event that Applicant's understanding is incorrect, Applicant respectfully requests that the Examiner

issue a corrected Examiner's Answer so that the Applicant can be afforded an opportunity to respond.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JAH', is positioned above a horizontal line.

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